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# West Valley City, a Utah municipal corporation v. Teresa Foy : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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WEST VALLEY CITY,  
a Utah municipal corporation,

Plaintiff and Appellee,

vs.

TERESA FOY

Defendant and Appellant,

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Case No. 2003-0503-CA

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BRIEF OF THE APPELLEE

Appeal from the Third Judicial District Court,  
in and for Salt Lake County, State of Utah;

the Honorable Pat B. Brian, District Judge

---

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**FILED**  
Utah Court of Appeals

**JAN 12 2004**

Paulette Stagg  
Clerk of the Court

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1. These ordinances are the West Valley City Municipal Code as existing and in effect in 1997. Some provisions may have been amended since that time.

## STATEMENT OF JURISDICTION

Appellate jurisdiction over this case is rested in the Utah Court of Appeals pursuant to §78-2a-3(2)(j), Utah Code Annotated.

## STATEMENT OF THE ISSUES

**ISSUE I. WAS THE TRIAL COURT CORRECT IN GRANTING THE CITY SUMMARY JUDGEMENT ON ITS COLLECTION CLAIM ON THE BASIS THAT FOY HAD FAILED TO EXHAUST HER ADMINISTRATIVE REMEDIES?**

**Standard of review:** Summary judgment is warranted when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The appellate court reviews a grant of summary judgment for correctness, giving no deference to the trial court's legal determinations. *Shattuck-Owen v. Snowbird Corporation*, 2000 UT 94 ¶ 9, 16 P.3d 555, 558 (Utah 2000).

**ISSUE II. WAS THE TRIAL COURT CORRECT WHEN IT GRANTED SUMMARY JUDGMENT TO THE CITY AND DISMISSED FOY'S CLAIM THAT THE CITY'S ACE PROGRAM WAS PREEMPTED BY STATE LAW?**

**Standard of review:** Summary judgment is warranted when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The appellate court reviews a grant of summary judgment for correctness, giving no deference to the trial court's legal determinations. *Shattuck-Owen v. Snowbird Corporation*, 2000 UT 94 ¶ 9, 16 P.3d 555, 558 (Utah 2000).

**ISSUE III. WAS THE TRIAL COURT CORRECT WHEN IT GRANTED SUMMARY JUDGMENT TO THE CITY AND DISMISSED FOY'S COUNTERCLAIM FOR A WRONGFUL LIEN?**

**Standard of review:** Summary judgment is warranted when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The appellate court reviews a grant of summary judgment for correctness, giving no deference to the trial court's legal determinations. *Shattuck-Owen v. Snowbird Corporation*, 2000 UT 94 ¶ 9, 16 P.3d 555, 558 (Utah 2000).

### **DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, AND RULES**

Determinative statutes of central importance to the case are included here in their entirety. Other statutes cited herein are reproduced in the Addendum.

#### **Utah Code Ann. 10-11-1. Abatement of weeds, garbage, refuse, and unsightly objects.**

A municipal legislative body may designate, and regulate the abatement of, injurious and noxious weeds, garbage, refuse, or any unsightly or deleterious objects or structures, and may appoint a municipal inspector for the purpose of carrying out the provisions of this chapter.

Amended by Chapter 292, 2003 General Session

#### **West Valley City Municipal Code, Section 10-1-201 SERVICE OF NOTICES.**

(a) Whenever service is required to be given under this Title for enforcement purposes, the document shall be served by any of the following methods, unless different provisions are otherwise specifically stated to apply:

- (1) Personal Service;
- (2) Regular mail, posted prepaid, to the last known address of the owner(s) or other responsible person(s);

- (3) Posting the notice conspicuously on or in front of the property. The form of the posted notice shall be approved by the Director or his or her designee;
- (4) Published in a newspaper of general circulation.

(b) Service by regular mail in the manner described above shall be deemed served on the fourth day after the date of mailing.

(c) The failure of any person with an interest in the property to actually receive any notice served in accordance with this section shall not affect the validity of any proceedings taken under this Title.

(Ord. No. 97-57, Enacted, 09/09/97)

**West Valley City Municipal Code, Section 10-2-103 REQUESTING HEARING.**

The Responsible Person has the right to request an Administrative Hearing. The request must be in writing and must be filed within 10 days from the date of service of the Notice of Violation. Failure to request a hearing as provided shall constitute a waiver of the right to a hearing.

(Ord. No. 97-57, Enacted, 09/09/97)

**West Valley City Municipal Code, Section 10-2-503 REQUEST FOR ADMINISTRATIVE CODE ENFORCEMENT HEARING.**

- (a) A person served with one of the following documents or notices has the right to request an Administrative Code Enforcement Hearing if the request is filed within ten (10) calendar days from the date of service of one of the following notices:



- (1) Notice of Violation;
- (2) Notice of Itemized Bill for Costs;
- (3) An Administrative Citation;
- (4) Notice of Emergency Abatement;
- (5) Notice Deeming Dog Vicious
- (6) Notice of Revocation of Dog License;
- (7) Notice Revoking Kennel Permit; or
- (8) Notice of Revocation of Right to Possess Animals

**West Valley City Municipal Code, Section 10-2-601 APPEAL OF ADMINISTRATIVE  
CODE ENFORCEMENT HEARING DECISION.**

(a) Any person adversely affected by any decision made in the exercise of the provisions of this chapter may file a petition for review of the decision or order with the district court within 30 days after the decision is rendered.

(b) No person may challenge in district court an Administrative Code Enforcement Hearing Officer's decision until that person has exhausted his administrative remedies.

(c) The courts shall:

- (1) presume that the Administrative Code Enforcement Hearing Officer's decision and orders are valid;

- (2) review the record to determine whether or not the decision was arbitrary, capricious, or illegal.

(Ord. No. 97-57, Enacted, 09/09/97)

**West Valley City Municipal Code, Section 10-3-103 PROCEDURES FOR RECORDATION.**

- (1) Once the Director has issued a notice of violation to a responsible person, and the property remains in violation after the deadline established in the notice of violation, and no request for an administrative hearing has been filed, the Director shall record a notice of violation with the Recorder's Office of Salt Lake County.
- (2) If an administrative hearing is held, and an order is issued in the City's favor, the Director shall record the administrative code enforcement order with the Recorder's Office of Salt Lake County.
- (3) The recordation shall include the name of the property owner, the parcel number, the legal description of the parcel, and a copy of the notice of violation or order.
- (4) The recordation does not encumber the property, but merely places future interested parties on notice of any continuing violation found upon the property.

(Ord. No. 97-57, Enacted, 09/09/97)

**STATEMENT OF THE CASE**

West Valley City accepts Teresa Foy's Statement of the Case, with the exception of the Statement of the Facts, which is set forth below.

## STATEMENT OF THE FACTS

1. On October 14, 1997, West Valley City mailed a "Notice of Violation" to Teresa Foy, informing her that there were violations of West Valley City Municipal Code on property located at 3247 West 3650 South and providing her with instructions for requesting an administrative hearing in the City's Administrative Code Enforcement ("ACE") program. (Record pages 5-7)
2. On October 14, 1997, Foy was the owner of a parcel of property located at 3247 West Lancer Way and also one of two officers and stockholders (with her husband) in Lancer Incorporated, which owned the adjacent property. (Foy deposition, record pages 578-579).
3. Foy testified under oath that she received the "Notice of Violation" described in paragraph 1 above. (Foy deposition, record page 580).
4. Foy testified that she did not contact West Valley City regarding the "Notice of Violation." Rather, she contacted her husband, who lived on the subject property, and told him that, "I said this needs to be taken care of." (Foy deposition, record page 580).
5. Foy further testified that she had no knowledge of what action her husband may or may not have taken. (Foy deposition, record page 580).
6. On October 29, 1997, West Valley City received an unsigned letter from "Renter K. Cooper" requesting an administrative hearing on the Notice of Violation (the "Cooper Letter"). (Record page 84; record page 156). The letter was dated October 25, 1997,

and was mailed on October 27, 1997. (Decker affidavit, record page 92).

7. Sometime following November 6, 1997, West Valley City received a second request for an administrative hearing. This request was also unsigned and was purported to be sent by the "Husband of Property Owner Teresa Foy" (the "Husband Letter"). (Record page 92; record page 54).
8. On December 3, 1997, an Administrative Hearing Officer, Lohra Miller, issued an "Administrative Code Enforcement Motion and Order to Enter and Abate." This Order authorized West Valley City to enter the property if necessary in order to bring the property into compliance with City ordinances. It also ordered Foy to pay \$150.00 per day in administrative fines from October 30, 1997 through the date of abatement. This order was issued ex parte. (Record pages 47-50).
9. On December 16, 1997, West Valley City issued a "Notice of Compliance" indicating that the property had been inspected and was now in compliance with City ordinances. (Record page 32).
10. On February 16, 1999, West Valley City recorded a "Certificate of Noncompliance" in the Salt Lake County Recorder's office. This "Certificate of Noncompliance" indicated that there were violations of the Municipal Code present on the property on January 4, 1999. (Record pages 173-178).
11. On May 1, 2000, the trial court judge remanded the case to the West Valley City Administrative Law Judge for the determination of certain factual issues relating to the case. (Record page 415).

12. West Valley City Administrative Law Judge L. Zane Gill issued his Memorandum Decision on the remand hearing on October 30, 2000. (Record pages 505-511).
13. On April 6, 2000, the trial court granted West Valley City's Motion for Summary Judgment and dismissed Foy's claims of wrongful lien and that the City's ACE program was preempted by State law. (Record pages 406-409).
14. Following oral argument, on March 11, 2003, the trial court issued its memorandum decision granting summary judgment to West Valley City on its collection claim. (Record pages 714-716).

### **SUMMARY OF THE ARGUMENTS**

#### **I. THE TRIAL COURT CORRECTLY RULED THAT, BASED UPON THE UNDISPUTED FACTS, FOY FAILED TO REQUEST A HEARING OR AN APPEAL AND, THEREFORE, FAILED TO EXHAUST HER ADMINISTRATIVE REMEDIES.**

The record contains undisputed facts upon which the trial court correctly based its decision that West Valley City was entitled to summary judgment as a matter of law. Foy admitted that she did not personally make a request for hearing or otherwise contact West Valley City upon receipt of the "Notice of Violation." Foy's supposed "agents" did not have actual or apparent authority to act on her behalf. Also, there was no request for administrative hearing filed within the required time limit. Therefore, the trial court was correct when it determined that Foy had failed to request an administrative hearing in accordance with the provisions of the City's ACE ordinances. It is also undisputed that she failed to file any appeal in district court. Because Foy failed to exhaust her administrative remedies, she

cannot now have the administrative decisions reviewed by the district court. The trial court's Memorandum Decision in this case is correct in all respects and the summary judgment decision in favor of West Valley City should be upheld.

**II. THE ADMINISTRATIVE CODE ENFORCEMENT ("ACE") ORDINANCE IS A VALID, CONSTITUTIONAL, EXERCISE OF THE CITY'S POWERS AND NOT IN CONFLICT WITH STATE STATUTES.**

Municipal ordinances carry with them a strong presumption of validity. *Murray City v. Hall*, 663 P.2d 1314, 1318 (Utah, 1983). Courts reviewing a city's exercise of legislative discretion give deference to the city unless it has acted outside its statutory authority or its actions are arbitrary and capricious. *Walker v. Brigham City*, 856 P.2d 347, 349 (Utah 1993). Foy incorrectly identifies §10-11-1, et seq. Utah Code Annotated, as preempting the City's ACE ordinances. However, § 10-11-1, et. seq. is a permissive statute which authorizes cities to take action for control of weeds and other "unsightly or deleterious" conditions on property and provides means for abatement, imposition of costs, and collection of costs. The ACE provisions are consistent and not in conflict with § 10-11-1, et seq. They merely provide an alternative means of accomplishing the same result, which is abatement of the conditions specified in the statute and violations of other City ordinances. As a matter of law, the ACE ordinance is not invalid as an intrusion into an area preempted by State law.

**III. THE RECORDED "CERTIFICATE OF NON-COMPLIANCE" AND "NOTICE OF VIOLATION" ARE NOT LIENS SUBJECT TO THE WRONGFUL LIEN ACT. THE CITY WAS CORRECTLY GRANTED SUMMARY JUDGMENT ON FOY'S WRONGFUL LIEN CLAIM.**

The "Certificate of Noncompliance" and "Notice of Violation" do not constitute a lien against the Foy property. The West Valley City Municipal Code expressly states that the recorded documents do not encumber the property, but merely provide notice of possibly ongoing ordinance violations. West Valley City Municipal Code § 10-3-103. Moreover, the documents themselves fail to identify any property interest amounting to a lien or other encumbrance. The documents and their recording also fail to meet the statutory requirements for a wrongful lien. By statutory definition, a "wrongful lien" "means any document that purports to create a lien or encumbrance on an owner's interest in certain real property..." Utah Code Ann. § 38-9-1(6). The recorded documents do not purport to create a lien or encumbrance on Foy's property.

### **DETAIL OF THE ARGUMENTS**

#### **I. THE TRIAL COURT CORRECTLY RULED THAT, BASED UPON THE UNDISPUTED FACTS, FOY FAILED TO REQUEST A HEARING OR AN APPEAL AND, THEREFORE, FAILED TO EXHAUST HER ADMINISTRATIVE REMEDIES.**

This is a very simple case that has become more complicated as it made its way through the trial court. In a nutshell, the City has enacted an Administrative Code Enforcement ("ACE") ordinance which provides for abatement of certain ordinance violations. The ACE ordinance also provides for an administrative hearing process and imposes fines for failure to comply. On October 14, 1997, the City provided Foy with a Notice of Violation regarding six ordinance violations on property in which she had a legal interest. (Record pages 5-7). Each violation carried a \$25 per day fine if not abated by

October 30, 1997. Foy failed to abate the violations for a period of time and was charged the sum of \$6,995 in fines and fees pursuant to the terms of the ordinance. She also failed to respond and request a hearing or an appeal within the statutory times. Foy failed to pay the fine and this action was instituted to collect the sum owed to West Valley City. The trial court managed to cut through Foy's attempt to turn this collection case into an appeal of the administrative decision by examining the core undisputed facts set forth above and correctly determining that Foy failed to exhaust her administrative remedies in this case. The trial court's judgment for West Valley City should be upheld.

**A. Neither Cooper nor Decker had authority to file a hearing request for Foy.**

Foy's arguments in this case are centered around her contention that she requested a hearing, through an agent, and that West Valley City failed to provide her with one. This argument fails because Foy's supposed agents did not have apparent or actual authority to act on her behalf.

First, Foy argues that the "K. Cooper" letter which was received by West Valley City on October 29, 1997, was her written request for a hearing. This argument is based upon the notion that "K. Cooper" ("Cooper") and her husband Mr. Decker ("Decker") had apparent authority to act on her behalf. She argues that the letter meets the requirements of the ordinance, refers to the violation by its case number, and refers to the owner being in southeastern Utah (Foy was in Blanding at the time). She believes that based upon the text of the "Cooper Letter" it should have been apparent to West Valley City that Cooper was acting on her behalf and that the City should have scheduled an administrative hearing in her case.



Instead, West Valley City concluded that the letter was not a response from Foy and did not schedule a hearing on Foy's case. Foy's argument on this point is completely contrary to well established Utah law.

There are many cases in Utah which establish the rules for determining whether or not a purported agent has apparent authority to act for another. The rule is simple. The indication that there is an agency relationship must come from interaction between the principal and the third party, not from the actions of the supposed agent. A finding of apparent authority requires that the acts or conduct of the principal (Foy) create an appearance which causes a third party (West Valley City) to reasonably believe that a second party (K. Cooper or Decker) has the authority to act on the principal's (Foy's) behalf. *Diston v. EnviroPak Medical Products, Inc.*, 893 P.2d 1071, 1076 (Utah App. 1995). The Utah Supreme Court has stated that: "Nor is the authority of the agent "apparent" merely because it looks so to the person with whom he deals. It is the principal who must cause third parties to believe that the agent is clothed with apparent authority." *Zions First National Bank v. Clark Clinic Corp.*, 762 P.2d 1090, 1095 (Utah 1988). The Utah Supreme Court has also stated "It is well settled law that the apparent or ostensible authority of an agent can be inferred only from the acts and conduct of the principal." *City Electric v. Dean Evans Chrysler-Plymouth*, 672 P.2d 89, 90 (Utah 1983).

In this case, there is absolutely no doubt that Cooper and/or Decker did not have apparent authority to act on Foy's behalf. As set forth above, the only way they could be clothed with apparent authority is through the actions of Foy herself. Foy's actions and

conduct must reasonably convince West Valley City that the apparent authority existed. The undisputed facts in this case indicate that Foy took no such action. Foy testified in her deposition that she received the “Notice of Compliance,” but that she did not contact the City. (Foy deposition, record page 580). Since she made no contact with West Valley City prior to the receipt of either the Cooper Letter or the Husband Letter, there is no way that she could have implied to the City through her actions or conduct that Cooper or Decker were acting on her behalf. Foy’s argument that either Cooper or Decker had apparent authority fails as a matter of law.

Any argument that either Cooper or Decker had actual authority to act for Foy is also flawed. As the trial court found, there is no evidence in the record whatsoever that Foy made Cooper her agent. There is not even any evidence that she even knew who Cooper was. As to Decker, Cooper did provide the City with written notice on November 24, 1997, that Decker was her agent and had the authority to act on her behalf. (Record page 584). However, even if this authority was determined to relate back to the time of the Husband Letter, and the Husband Letter is assumed to come from Decker, the argument still fails. It is undisputed that the Husband Letter was not even mailed until November 6, 1997, well after the 10-day time limit for requesting an administrative hearing. (Decker affidavit, record page 92). This argument also fails as a matter of law.

**B. No hearing request was filed within the legal time limits.**

Even if one assumes that either Cooper or Decker had authority to act for Foy, an alternative reason for concluding that Foy did not request a hearing is found in the

Administrative Code Enforcement (“ACE”) ordinances themselves. According to the clear language of both the ordinances and the “Notice of Violation,” and based upon the undisputed facts of this case, both the Cooper Letter and the Husband Letter were received by the City after the deadline for requesting an administrative hearing.<sup>2</sup> The pertinent dates are as follows:

1. The “Notice of Violation” is dated October 14, 1997, and the trial court found October 14<sup>th</sup> to be the mailing date of the Notice. (Record pages 5-7; 714-716).
2. The notation on the top of the “Cooper Letter” provides undisputed evidence that it was received by West Valley City on October 29, 1997. (Record pages 84, 156). (Decker testified that the “Cooper Letter” was mailed on October 27<sup>th</sup>.) (Record page 92).
3. The deposition testimony of Decker provides undisputed evidence that he did not mail the “Husband Letter” until November 6, 1997. (Record page 92).

There are several sections of the ACE ordinance and the instructions with the “Notice of Violation” that must be considered in determining the last filing date for a hearing request.

These provisions are:

- 
2. For an unknown reason, both Foy’s counsel and the City’s counsel below adopted October 30, 1997 as the due date for the request for hearing. This was most likely because the “Notice of Violation” identified October 30<sup>th</sup> as the date by which the violations must be abated and a “Notice of Compliance” obtained. By the clear terms of both the ordinances and the instructions included with the Notice of Violation, October 30<sup>th</sup> is not the correct date.

1. §10-2-103 West Valley Municipal Code, “Requesting Hearing,” states that, “The Responsible Person has the right to request an Administrative Hearing. The request must be in writing and must be filed within ten days from the date of service of the Notice of Violation. Failure to request a hearing as provided shall constitute a waiver of the right to a hearing.”
2. §10-1-201, West Valley City Municipal Code, “Service of Notices” states:  
“(a) Whenever a notice is required to be given under this Title for enforcement purposes, the notice shall be served by any of the following methods, unless different provisions are otherwise specifically stated to apply:  
  - (2) Regular mail, postage prepaid, to the last known address of the owner(s) or other responsible person(s).  
(b) Service by regular mail in the manner described above shall be deemed served on the fourth day after the date of the mailing.”
3. §10-2-503 West Valley City Code, “Request for Administrative Code Enforcement Hearing” states:  
“(1) A person served with one of the following documents or notices has the right to request an administrative code enforcement hearing, if the request is filed within ten calendar days from the date of service of one of the following notices:  
  - (a) Notice of violation;
4. The third page of the instructions of the “Notice of Violation” states, “You must file a written request for hearing within 10 days from the date the notice of violation was

issued. If the notice was mailed, the request for hearing must be made within 13 days of the mailing date.”

5. The third page of the “Notice of Violation” states in large, bold letters:

**\*\*\*Failure to file a written request for a hearing within  
10 days waives your right to a hearing.\*\*\***

With the foregoing dates and provisions in mind, the calculation of the due date is relatively simple. The “Notice of Violation” was mailed on October 14, 1997. According to the service rules of §10-1-201 of the ACE ordinance, service then becomes complete on the fourth day after mailing, which is October 18<sup>th</sup> in this case (not counting the day of mailing, October 14<sup>th</sup>). From the date of service, a request for hearing must be filed within calendar 10 days. Counting ten days after the 18<sup>th</sup> of October (without counting the 18<sup>th</sup>) puts the last day for filing a request for hearing as October 28, 1997.

The undisputed evidence is that the “Cooper Letter” was received by West Valley City on October 29, 1997, one day after the deadline. (Record pages 84, 156). Likewise, the “Husband Letter” was received by the City sometime after it was mailed on November 6, 1997, which is at least a week past the deadline. (Record page 92) The ACE program administrator, Candace Gleed, also testified in her deposition that the request was received past the ten-day deadline. (Record page 84).

### **C. Foy failed to appeal.**

The final blow to Foy’s position is the undisputed fact that she failed to file any appeal in this case. Section 10-2-601, West Valley City Municipal Code, provides that, “Any person

adversely affected by any decision made in the exercise of the provisions of this Chapter may file a petition for review of the decision or order with the district court within 30 days after the decision is rendered.” Foy had an opportunity to appeal either the decision to not accept the “Cooper Letter” or “Husband Letter” as legitimate hearing requests, or to appeal the abatement order issued by hearing officer Lohra Miller. (Record pages 47-50). Foy failed to take advantage of this remedy.

**D. Foy cannot contest the validity of the administrative decision.**

Because Foy failed to request an administrative hearing or to file an appeal in district court, she is estopped from contesting the validity of the administrative decision or the amount of the fine. The trial court correctly held that she failed to exhaust her administrative remedies.

The well-settled law in Utah is that Utah courts may not exercise subject matter jurisdiction over a claim if a statute or ordinance requires exhaustion of remedies and the party failed to pursue the remedies that were available. *Hom v. Utah Dept. of Public Safety*, 962 P.2d 95,99 (Utah App. 1998). See also, *Nebeker v. Utah State Tax Comm’n*, 201 UT 74, ¶ 14, 34 P.3d 180, 184 (Utah 2001) (“As a general rule, ‘parties must exhaust applicable administrative remedies as a prerequisite to seeking judicial review’”).

In this case, §10-2-601, West Valley City Municipal Code, specifically requires exhaustion of administrative remedies prior to review by the district court. Paragraph (2) of §10-2-601 states “No person may challenge in district court an administrative code

enforcement hearing officer's decision until that person has exhausted his or her administrative remedies."

Although Foy made a valiant effort in the district court to turn this case into a general appeal of the underlying case against her, the trial court judge wisely limited his review to the validity of the City's collection claim. The details of the administrative case against Foy such as the actual location of violations and whether or not she was a Responsible Person as defined in the ordinance were determined in the Orders and Decisions of hearing officers Miller and Gill. The trial court correctly determined that it should not disturb those findings because Foy failed to exhaust her administrative remedies.

Based on the foregoing, it is clear that the trial court was correct when it determined that Foy had failed to request an administrative hearing in accordance with the provisions of the West Valley City ordinances. It is also undisputed that Foy failed to file any appeal in district court. Because Foy failed to exhaust her administrative remedies, she cannot now have the administrative decisions reviewed by the district court. The trial court's Memorandum Decision in this case is correct in all respects and the summary judgment decision in favor of the City should be upheld.

## **II. THE ADMINISTRATIVE CODE ENFORCEMENT ("ACE") ORDINANCE IS A VALID, CONSTITUTIONAL, EXERCISE OF THE CITY'S POWERS AND NOT IN CONFLICT WITH STATE STATUTES.**

Foy makes allegations that the ACE ordinance is in conflict with or preempted by State statutes. She is unable, however, to establish the truth of these allegations.

Municipal ordinances carry with them a strong presumption of validity. *Murray City v. Hall*, 663 P.2d 1314, 1318 (Utah 1983) (Ordinances “should not be declared unconstitutional if there is any reasonable basis upon which they can be found to come within the constitutional framework”). Courts reviewing a city’s exercise of legislative discretion give deference to the city unless it has acted outside its statutory authority or its actions are arbitrary and capricious. *Walker v. Brigham City*, 856 P.2d 347, 349 (Utah 1993). In addition to the presumption of validity, the ACE provisions also carry the approval of the Utah Court of Appeals. In *West Valley City v. Roberts*, 1999 UT App 358, 993 P.2d 252 (Utah App. 1999), the Court of Appeals, examining a challenge to the ACE program enforcement of a building code violation, noted that the general welfare powers granted by the legislature to cities included “a city’s power to use administrative hearing procedures to enforce local ordinances.” *Roberts* ¶ 9.

In its Declaration of Purpose, the ACE ordinance sets forth the findings of the City Council, including the finding that “Code enforcement is vital to the protection of the public’s health, safety, and quality of life.” West Valley City Municipal Code § 10-1-102. As noted in *Roberts*, the Utah Legislature has delegated to municipalities the authority to enact ordinances pursuant to a general welfare and police power. Utah Code Ann. § 10-8-84. “When the State has granted general welfare power to local governments, those governments have independent authority apart from, and in addition to, specific grants of authority to pass ordinances which are reasonably and appropriately related to the objectives of that power, i.e., providing for the public safety, health, morals, and welfare.” *State v. Hutchinson*, 624



P.2d 1116, 1126 (Utah 1980). “A general welfare or similar clause, granting extremely broad power to a municipal corporation, is liberally construed to accord to a municipality wide discretion in the exercise of the police power.” *Id.* at 1125 (citation omitted). There is no question that West Valley City’s enactment of the ACE provisions fall within its legislatively granted powers.

Foy identifies Utah Code Ann. § 10-11-1, et. seq., as a statutory provision which she alleges preempts the ACE provisions. Her arguments are not correct. § 10-11-1, et. seq. is a permissive statute which authorizes cities to take action for control of weeds and other “unsightly or deleterious” conditions on property and provides means for abatement, imposition of costs, and collection of costs.

The city commissioners of cities of the first and second class and the city councils of the cities of the third class, and the board of trustees of towns, may designate, and regulate the abatement of, injurious and noxious weeds, garbage, refuse or any unsightly or deleterious objects or structures, and may appoint a city inspector for the purpose of carrying out the provisions of this chapter.

Utah Code Ann. § 10-11-1. Although these statutes permit cities to deal with these problems, it does not restrict them from taking other actions to accomplish the same thing. The City, as spelled out in *Hutchinson*, has broad general welfare and police powers which it may exercise on behalf of its citizenry. *Hutchinson* at 1125. There is no indication from the statutory language in § 10-11-1, et seq. that the legislature intended to preempt the field of nuisance abatement, making the ACE provisions or any other municipal ordinances invalid. “[A]n ordinance is invalid if it intrudes into an area which the Legislature has preempted by

comprehensive legislation intended to blanket a particular field.” *Hutchinson* at 1121. See also *Redwood Gym v. Salt Lake County Commission*, 624 P.2d 1138, 1144 (Utah 1981) (“[L]ocal governments may legislate by ordinance in areas previously dealt with by state legislation provided the ordinance in no way conflicts with existing state law.”) Where the language and operation of the statute provide no evidence of preemptive intent, there is no preemption. *Price Development Co., L.P. v. Orem City*, 995 P.2d 1237 (Utah 2000). There is simply no evidence of legislative intent to preempt this field.

It is important to recognize that the ACE provisions do not deal directly with substantive law as to what constitutes a violation of City ordinances. They are simply an alternative procedural remedy for enforcement of other City ordinances. The ACE provisions are consistent and not in conflict with § 10-11-1, et seq. They merely provide an alternative means of accomplishing the same result, which is abatement of the conditions specified in the statute and violations of other City ordinances. As a matter of law, the ACE ordinance is not invalid as an intrusion into an area preempted by State law. The trial court was correct in granting summary judgment to the City on this issue. (Record pages 406-409).

**III. THE RECORDED “CERTIFICATE OF NON-COMPLIANCE” AND “NOTICE OF VIOLATION” ARE NOT LIENS SUBJECT TO THE WRONGFUL LIEN ACT. THE CITY WAS CORRECTLY GRANTED SUMMARY JUDGMENT ON FOY’S WRONGFUL LIEN CLAIM.**

Foy’s Counterclaim argument that the recorded documents<sup>3</sup> constitute a wrongful lien begins with the unsupported assumption that the “Certificate of Noncompliance” and “Notice

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3. These recorded documents arose from a 1998/1999 case on Foy’s property (Case Nos.

of Violation” are, in fact, liens. As a matter of law, however, these documents do not constitute liens and are not subject to the statutory wrongful lien provisions. Foy’s wrongful lien claim therefore fails and the trial court’s dismissal of this claim was correct.

The Utah Supreme Court has defined a lien as “a legal charge collectible out of specific property for the payment of a debt...In other words, a lien gives the lienholder a right to collect his debt out of the charged property.” *Citizen’s Bank v. Elks Bldg. N.V.*, 663 P.2d 56, 59 (Utah 1983). Language creating a lien “must clearly state an intention to do so.”

Id.

The “Certificate on Noncompliance” and “Notice of Violation” do not constitute a lien against the Foy property. To begin with, the West Valley City Municipal Code expressly states that the recorded documents do not encumber the property, but merely provide notice of possibly ongoing ordinance violations. West Valley City Municipal Code § 10-3-103. Moreover, the documents themselves fail to identify any property interest amounting to a lien or other encumbrance. See *Bergstrom v. Moore*, 677 P.2d 1123, 1124 (Utah 1984). (“[A]n encumbrance [is] any right a third party holds in land which constitutes a burden or limitation upon the rights of the fee title holder.”) The Certificate simply states that failure to bring the property into compliance may result in the City taking abatement action which would then be charged to the property by way of a lien. The plain language contemplates a separate document, in the event that West Valley City undertakes abatement action, to encumber the

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98-7430 and 99-0436) and are unrelated to the violations which are the subject of the remainder of this appeal, which is Case No. 97-5215.

property for costs to be recovered. This identification of a potential of a future lien does not transform the Certificate itself into a lien. The Certificate does not facially encumber the property or purport to create a lien.

Likewise, the “Notice of Violation” does not impose an encumbrance on the property. The word “lien” appears in the Notice only at the end in a paragraph identifying the consequences of failure to correct the violations. This paragraph identifies a possible lien on the property as one of six options. (Record pages 173-178). Notably, the lien option is separate from the preceding option of recording the Notice of Violation with the County Recorder. There is nothing in the Notice or the Certificate which identifies a current charge of an amount to the property, an enforceable right to collect that charge from the property or any legal limitation on Foy’s rights with respect to the property. Simply stated, these documents are not liens.

The documents and their recording also fail to meet the statutory requirements for a wrongful lien. By statutory definition, a “wrongful lien” “means any document that purports to create a lien or encumbrance on an owner’s interest in certain real property...” Utah Code Ann. § 38-9-1(6). The recorded documents do not purport to create a lien or encumbrance on Ms. Foy’s property. The City also is not a “lien claimant” defined as “a person claiming an interest in real property who offers a document for recording or filing with any county recorder in the state asserting a lien or other claim of interest in certain real property.” Utah Code Ann. § 38-9-1(2). The West Valley City Municipal Code expressly states that

recording of the documents does not encumber the property; therefore, the documents cannot have been offered as asserting a lien.

The recorded documents are not liens and fail to fall within the statutory provisions for wrongful liens. Foy's wrongful lien claim fails as a matter of law and the trial court's decision in favor of the City and dismissal of Foy's counterclaim should be upheld. (Record pages 406-409).

### **CONCLUSION**

Based on the foregoing, it is clear that the trial court was correct when it determined that Foy had failed to request an administrative hearing in accordance with the provisions of the West Valley City ordinances. It is also undisputed that she failed to file any appeal in district court. Because Foy failed to exhaust her administrative remedies, she cannot now have the administrative decisions reviewed by the district court.

Municipal ordinances carry with them a strong presumption of validity. There is no question that the City's enactment of the ACE provisions fall within its legislatively granted powers. The ACE provisions are consistent, and not in conflict, with § 10-11-1, et seq. They merely provide an alternative means of accomplishing the same result, which is abatement of the conditions specified in the statute and violations of other City ordinances. The trial court's judgment for the City was correct.

Finally, the documents recorded by West Valley City are not liens and fail to fall within the statutory provisions for wrongful liens. Foy's wrongful lien claim failed as a

matter of law and the trial court's summary judgment for the City and dismissal of Foy's Counterclaim was correct.

The trial court's rulings in this case are correct in all respects and judgment in favor of West Valley City should be upheld.

DATED this 12<sup>TH</sup> day of JANUARY, 2004.

WEST VALLEY CITY

  
\_\_\_\_\_  
J. Richard Catten, Deputy City Attorney  
Attorney for Plaintiff/Appellee

## CERTIFICATE OF SERVICE

I, J. Richard Catten, certify that on the 12<sup>TH</sup> day of January, 2004, I served upon Stephen G. Homer, Attorney for Defendant/Appellant, two (2) copies of the Reply Brief of the Appellee, by causing said Briefs to be mailed to him, by first class mail, with sufficient postage prepaid, to the following address:

Stephen G. Homer  
Attorney at Law  
9225 South Redwood Road  
West Jordan, Utah 84088  
Attorney for Defendant/Appellant

WEST VALLEY CITY

A handwritten signature in black ink, appearing to read "J. Richard Catten", is written over a horizontal line.

J. Richard Catten, Deputy City Attorney  
Attorney for Plaintiff/Appellee

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**Utah Code Ann. 10-8-84. Ordinances, rules, and regulations -- Passage -- Penalties.**

(1) The municipal legislative body may pass all ordinances and rules, and make all regulations, not repugnant to law, necessary for carrying into effect or discharging all powers and duties conferred by this chapter, and as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort, and convenience of the city and its inhabitants, and for the protection of property in the city.

(2) The municipal legislative body may enforce obedience to the ordinances with fines or penalties in accordance with Section 10-3-703.

Amended by Chapter 323, 2000 General Session

**Utah Code Ann. 10-11-2. Notice to property owners.**

It shall be the duty of such city inspector to make careful examination and investigation, as may be provided by ordinance, of the growth and spread of such injurious and noxious weeds, and of garbage, refuse or unsightly or deleterious objects or structures; and it shall be his duty to ascertain the names of the owners and descriptions of the premises where such weeds, garbage, refuse, objects or structures exist, and to serve notice in writing upon the owner or occupant of such land, either personally or by mailing notice, postage prepaid, addressed to the owner or occupant at the last known post-office address as disclosed by the records of the county assessor, requiring such owner or occupant, as the case may be, to eradicate, or destroy and remove, the same within such time as the inspector may designate, which shall not be less than ten days from the date of service of such notice. One

notice shall be deemed sufficient on any lot or parcel of property for the entire season of weed growth during that year. The inspector shall make proof of service of such notice under oath, and file the same in the office of the county treasurer.

No Change Since 1953

**Utah Code Ann. 10-11-3. Neglect of property owners -- Removal by city -- Costs of removal.**

If any owner or occupant of lands described in such notice shall fail or neglect to eradicate, or destroy and remove, such weeds, garbage, refuse, object or structure upon the premises in accordance with such notice, it shall be the duty of the inspector, at the expense of the municipality, to employ necessary assistance and cause such weeds, garbage, refuse, objects or structures to be removed or destroyed. He shall prepare an itemized statement of all expenses incurred in the removal and destruction of same and shall mail a copy thereof to the owner demanding payment within twenty days of the date of mailing. Said notice shall be deemed delivered when mailed by registered mail addressed to the property owner's last known address. In the event the owner fails to make payment of the amount set forth in said statement to the municipal treasurer within said twenty days, the inspector, on behalf of the municipality, may cause suit to be brought in an appropriate court of law or may refer the matter to the county treasurer as hereinafter provided. In the event collection of said costs are pursued through the courts, the municipality may sue for and receive judgment upon all of said costs of removal and destruction together with reasonable attorneys' fees, interest and

court costs. The municipality may execute on such judgment in the manner provided by law. In the event that the inspector elects to refer the matter to the county treasurer for inclusion in the tax notice of the property owner, he shall make, in triplicate, an itemized statement of all expenses incurred in the removal and destruction of the same and shall deliver the three copies of said statement to the county treasurer within ten days after the completion of the work of removing such weeds, garbage, refuse, objects or structures.

Amended by Chapter 13, 1963 General Session

**Utah Code Ann. 10-11-4. Costs of removal to be included in tax notice.**

Upon receipt of the itemized statement of the cost of destroying or removing such weeds, refuse, garbage, objects, or structures, the county treasurer shall forthwith mail one copy to the owner of the land from which the same were removed, together with a notice that objection in writing may be made within 30 days to the whole or any part of the statement so filed to the county legislative body. The county treasurer shall at the same time deliver a copy of the statement to the clerk of the county legislative body. If objections to any statement are filed with the county legislative body, they shall set a date for hearing, giving notice thereof, and upon the hearing fix and determine the actual cost of removing the weeds, garbage, refuse, or unsightly or deleterious objects or structures, and report their findings to the county treasurer. If no objections to the items of the account so filed are made within 30 days of the date of mailing such itemized statement, the county treasurer shall enter the amount of such statement on the assessment rolls of the county in the column prepared for that purpose, and

likewise within ten days from the date of the action of the county legislative body upon objections filed shall enter in the prepared column upon the tax rolls the amount found by the county legislative body as the cost of removing and destroying the said weeds, refuse, garbage or unsightly and deleterious objects or structures. If current tax notices have been mailed, said taxes may be carried over on the rolls to the following year. After the entry by the county treasurer of the costs of removing weeds, garbage, refuse or unsightly and deleterious objects or structures the amount so entered shall have the force and effect of a valid judgment of the district court, and shall be a lien upon the lands from which the weeds, refuse, garbage or unsightly and deleterious objects or structures were removed and destroyed, and shall be collected by the county treasurer at the time of the payment of general taxes. Upon payment thereof receipt shall be acknowledged upon the general tax receipt issued by the treasurer.

Amended by Chapter 227, 1993 General Session

**Utah Code Ann. 38-9-1. Definitions.**

As used in this chapter:

(1) "Interest holder" means a person who holds or possesses a present, lawful property interest in certain real property, including an owner, title holder, mortgagee, trustee, or beneficial owner.

(2) "Lien claimant" means a person claiming an interest in real property who offers a document for recording or filing with any county recorder in the state asserting a lien or other claim of interest in certain real property.

(3) "Owner" means a person who has a vested ownership interest in certain real property.

(4) "Record interest holder" means a person who holds or possesses a present, lawful property interest in certain real property, including an owner, titleholder, mortgagee, trustee, or beneficial owner, and whose name and interest in that real property appears in the county recorder's records for the county in which the property is located.

(5) "Record owner" means an owner whose name and ownership interest in certain real property is recorded or filed in the county recorder's records for the county in which the property is located.

(6) "Wrongful lien" means any document that purports to create a lien or encumbrance on an owner's interest in certain real property and at the time it is recorded or filed is not:

- (a) expressly authorized by this chapter or another state or federal statute;
- (b) authorized by or contained in an order or judgment of a court of competent jurisdiction in the state; or
- (c) signed by or authorized pursuant to a document signed by the owner of the real property.

Repealed and Re-enacted by Chapter 125, 1997 General Session

**Utah Code Ann. 38-9-2. Scope.**



(1) (a) The provisions of Sections 38-9-1, 38-9-3, 38-9-4, 38-9-5, and 38-9-6 apply to any recording or filing or any rejected recording or filing of a lien pursuant to this chapter on or after May 5, 1997.

(b) The provisions of Sections 38-9-1 and 38-9-7 apply to all liens of record regardless of the date the lien was recorded or filed.

(2) The provisions of this chapter shall not prevent a person from filing a lis pendens in accordance with Section 78-40-2 or seeking any other relief permitted by law.

(3) This chapter does not apply to a person entitled to a lien under Section 38-1-3 who files a lien pursuant to Title 38, Chapter 1, Mechanics' Liens.

Amended by Chapter 122, 1999 General Session

**Utah Code Ann. 38-9-3. County recorder may reject wrongful lien within scope of employment -- Good faith requirement.**

(1) A county recorder may reject recording of a lien if the county recorder determines the lien is a wrongful lien as defined in Section 38-9-1. If the county recorder rejects the document, the county recorder shall immediately return the original document together with a notice that the document was rejected pursuant to this section to the person attempting to record or file the document or to the address provided on the document.

(2) A county recorder who, within the scope of the county recorder's employment, rejects or accepts a document for recording or filing in good faith under this section may not be liable for damages except as otherwise provided by law.

(3) If a rejected document is later found to be recordable pursuant to a court order, it shall have no retroactive recording priority.

(4) Nothing in this chapter shall preclude any person from pursuing any remedy pursuant to Utah Rules of Civil Procedure, Rule 65A, Injunctions.

Repealed and Re-enacted by Chapter 125, 1997 General Session

**Utah Code Ann. 38-9-4. Civil liability for filing wrongful lien -- Damages.**

(1) A lien claimant who records or files or causes a wrongful lien as defined in Section 38-9-1 to be recorded or filed in the office of the county recorder against real property is liable to a record interest holder for any actual damages proximately caused by the wrongful lien.

(2) If the person in violation of this Subsection (1) refuses to release or correct the wrongful lien within 20 days from the date of written request from a record interest holder of the real property delivered personally or mailed to the last-known address of the lien claimant, the person is liable to that record interest holder for \$1,000 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs.

(3) A person is liable to the record owner of real property for \$3,000 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs, who records or files or causes to be recorded or filed a wrongful lien as defined in Section 38-9-1 in the office of the county recorder against the real property, knowing or having reason to know that the document:

- (a) is a wrongful lien;
- (b) is groundless; or
- (c) contains a material misstatement or false claim.

Repealed and Re-enacted by Chapter 125, 1997 General Session

**Utah Code Ann. 38-9-5. Criminal liability for filing a wrongful lien -- Penalties.**

(1) A person who intentionally records or files or causes to be recorded or filed a wrongful lien with a county recorder is guilty of a class B misdemeanor. Under this Subsection (1), it is an affirmative defense to this offense that the person recorded or filed a release of the claim or lien within 20 days from the date of written request from a record interest holder that the wrongful lien be released. The accused person shall prove this affirmative defense by a preponderance of the evidence.

(2) A person who intentionally records or files or causes to be recorded or filed a wrongful lien with the county recorder is guilty of a third degree felony if, at the time of recording or filing, the person knowingly had no present, lawful property interest in the real property and no reasonable basis to believe he had a present, lawful property interest in the real property.

(3) Nothing in this section shall bar a prosecution for any act in violation of Section 76-8-414.

Enacted by Chapter 125, 1997 General Session

**Utah Code Ann. 38-9-6. Petition to file lien -- Notice to record interest holders --  
Summary relief -- Contested petition.**

(1) A lien claimant whose document is rejected pursuant to Section 38-9-3 may petition the district court in the county in which the document was rejected for an expedited determination that the lien may be recorded or filed.

(2) (a) The petition shall be filed with the district court within ten days of the date notice is received of the rejection and shall state with specificity the grounds why the document should lawfully be recorded or filed.

(b) The petition shall be supported by a sworn affidavit of the lien claimant.

(c) If the court finds the petition is insufficient, it may dismiss the petition without a hearing.

(d) If the court grants a hearing, the petitioner shall serve a copy of the petition, notice of hearing, and a copy of the court's order granting an expedited hearing on all record interest holders of the property sufficiently in advance of the hearing to enable any record interest holder to attend the hearing and service shall be accomplished by certified or registered mail.

(e) Any record interest holder of the property has the right to attend and contest the petition.

(3) Following a hearing on the matter, if the court finds that the document may lawfully be recorded, it shall issue an order directing the county recorder to accept the document for

recording. If the petition is contested, the court may award costs and reasonable attorney's fees to the prevailing party.

(4) A summary proceeding under this section is only to determine whether or not a contested document, on its face, shall be recorded by the county recorder. The proceeding may not determine the truth of the content of the document nor the property or legal rights of the parties beyond the necessary determination of whether or not the document shall be recorded. The court's grant or denial of the petition under this section may not restrict any other legal remedies of any party, including any right to injunctive relief pursuant to Rules of Civil Procedure, Rule 65A, Injunctions.

(5) If the petition contains a claim for damages, the damage proceedings may not be expedited under this section.

Enacted by Chapter 125, 1997 General Session

**Utah Code Ann. 38-9-7. Petition to nullify lien -- Notice to lien claimant -- Summary relief -- Finding of wrongful lien -- Wrongful lien is void.**

(1) Any record interest holder of real property against which a wrongful lien as defined in Section 38-9-1 has been recorded may petition the district court in the county in which the document was recorded for summary relief to nullify the lien.

(2) The petition shall state with specificity the claim that the lien is a wrongful lien and shall be supported by a sworn affidavit of the record interest holder.

(3) (a) If the court finds the petition insufficient, it may dismiss the petition without a hearing.

(b) If the court finds the petition is sufficient, the court shall schedule a hearing within ten days to determine whether the document is a wrongful lien.

(c) The record interest holder shall serve a copy of the petition on the lien claimant and a notice of the hearing pursuant to Rules of Civil Procedure, Rule 4, Process.

(d) The lien claimant is entitled to attend and contest the petition.

(4) A summary proceeding under this section is only to determine whether or not a document is a wrongful lien. The proceeding shall not determine any other property or legal rights of the parties nor restrict other legal remedies of any party.

(5) (a) Following a hearing on the matter, if the court determines that the document is a wrongful lien, the court shall issue an order declaring the wrongful lien void ab initio, releasing the property from the lien, and awarding costs and reasonable attorney's fees to the petitioner.

(b) (i) The record interest holder may record a certified copy of the order with the county recorder.

(ii) The order shall contain a legal description of the real property.

(c) If the court determines that the claim of lien is valid, the court shall dismiss the petition and may award costs and reasonable attorney's fees to the lien claimant. The dismissal order shall contain a legal description of the real property. The prevailing lien

claimant may record a certified copy of the dismissal order.

(6) If the district court determines that the lien is a wrongful lien as defined in Section 38-9-1, the wrongful lien is void ab initio and provides no notice of claim or interest.

(7) If the petition contains a claim for damages, the damage proceedings may not be expedited under this section.

Enacted by Chapter 125, 1997 General Session

**Utah Code Ann. 78-2a-3. Court of Appeals jurisdiction.**

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

- (a) to carry into effect its judgments, orders, and decrees; or
- (b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

- (a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;
- (b) appeals from the district court review of:

(i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and

(ii) a challenge to agency action under Section 63-46a-12.1;

(c) appeals from the juvenile courts;

(d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

(e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;

(f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

(g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, parent-time, visitation, adoption, and paternity;

(i) appeals from the Utah Military Court; and

(j) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any



matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings.

Amended by Chapter 255, 2001 General Session

Amended by Chapter 302, 2001 General Session

WEST VALLEY CITY, UTAH  
ORDINANCE NO. 97 - 57

97-507  
97-57

8157

Draft Date 9/3/97  
Date Adopted 09/04/97  
Date Effective 09/09/97

**AN ORDINANCE ADOPTING TITLE 10 OF THE WEST  
VALLEY CITY MUNICIPAL CODE, "ADMINISTRATIVE  
CODE ENFORCEMENT HEARING PROGRAM."**

WHEREAS, the citizens of West Valley City have become very concerned with the appearance and image of their community and are demanding that it be improved; and

WHEREAS, the current remedies available for ordinance enforcement often take an extremely long time in achieving compliance, leaving the citizens to suffer with the unsightly and unhealthy living environment; and

WHEREAS, other cities use a combination of administrative, civil and criminal remedies to bring about compliance of the city ordinances and have been successful in obtaining compliance in a reasonable length of time; and

WHEREAS, West Valley City would like to make additional remedies available for enforcing ordinance violations so that properties are brought into compliance in an easier and more timely manner; and

WHEREAS, the City Council of West Valley City does hereby determine that it is in the best interests of the health, safety, and welfare of the citizens of West Valley City to adopt this program to assist in obtaining compliance with the ordinances and improve the appearance of the community.

NOW, THEREFORE, BE IT ORDAINED by the City Council of West Valley City as follows:

**Section 1. Repealer.** Any provision of the West Valley City Code found to be in conflict with this ordinance is hereby repealed.

**Section 2. Enactment.** Title 10 of the West Valley City Code is hereby enacted to read as follows:

**TITLE 10. ADMINISTRATIVE CODE ENFORCEMENT  
HEARING PROGRAM**

- 2 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS  
3 CHAPTER 2. ADMINISTRATIVE CODE ENFORCEMENT PROCEDURES  
4 CHAPTER 3. ADMINISTRATIVE AND JUDICIAL REMEDIES  
5 CHAPTER 4. RECOVERY OF CODE ENFORCEMENT PENALTIES, FEES AND COSTS  
6

7 **CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS**  
8

9 **PART 1 - GENERAL PROVISIONS**

- 10 10-1-101. SHORT TITLE  
11 10-1-102. DECLARATION OF PURPOSE  
12 10-1-103. SCOPE  
13 10-1-104. EXISTING LAW CONTINUED  
14 10-1-105. CRIMINAL PROSECUTION RIGHT  
15 10-1-106. EFFECT OF HEADING  
16 10-1-107. VALIDITY OF TITLE - SEVERABILITY  
17 10-1-108. NO MANDATORY DUTY - CIVIL LIABILITY  
18 10-1-109. GENERAL RULES OF INTERPRETATION OF ORDINANCES  
19 10-1-110. DEFINITIONS APPLICABLE TO TITLE GENERALLY  
20 10-1-111. ACTS INCLUDE CAUSING, AIDING AND ABETTING  
21

22 **PART 2 - SERVICE REQUIREMENTS**

- 23 10-1-201. SERVICE OF NOTICES  
24 10-1-202. CONSTRUCTIVE NOTICE OF RECORDED DOCUMENTS  
25

26 **PART 3 - GENERAL AUTHORITY AND OFFENSES**

- 27 10-1-301. GENERAL ENFORCEMENT AUTHORITY  
28 10-1-302. ADOPTION OF POLICY AND PROCEDURES  
29 10-1-303. AUTHORITY TO INSPECT  
30 10-1-304. POWER TO ARREST  
31 10-1-305. FALSE INFORMATION OR REFUSAL PROHIBITED  
32 10-1-306. FAILURE TO OBEY A SUBPOENA  
33

34  
35 **PART 1 - GENERAL PROVISIONS**

36  
37 **10-1-101. SHORT TITLE**

38 This title shall be known as the "Administrative Code Enforcement Hearing Program (A.C.E. Hearing  
39 Program)." This title shall also be known as Title 10, West Valley City Municipal Code. It may be cited and pleaded  
40 under either designation."  
41

42 **10-1-102. DECLARATION OF PURPOSE**

43 The Council finds that the enforcement of the W.V.C.M.C. and applicable state codes throughout the City is  
44 an important public service. Code Enforcement is vital to the protection of the public's health, safety and quality of life.  
45 The Council recognizes that enforcement starts with the drafting of precise regulations that can be effectively applied  
46 in Administrative Code Enforcement Hearings and judicial proceedings. The Council further finds that a comprehensive  
47 code enforcement system that uses a combination of judicial and administrative remedies is critical to gain compliance  
48 with these regulations. Failure to comply with an administrative code enforcement action may require the City Attorney  
49 to file a judicial action to gain compliance.  
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**10-1-103 SCOPE**

The provisions of this Title may be applied to all violations of the W.V.C.M.C. It has been designed as an additional remedy for the City to use in achieving compliance of its ordinances. It applies to all zoning areas equally.

**10-1-104. EXISTING LAW CONTINUED**

The provisions of this Title do not invalidate any other title or ordinance, but shall be read in conjunction with those titles and ordinances as an additional remedy available for enforcement of those ordinances.

**10-1-105. CRIMINAL PROSECUTION RIGHT**

The City has sole discretion in deciding whether to file a civil or criminal case for the violation of any of its ordinances. The City may choose to file both or, one or the other. The enactment of this administrative remedy shall in no way interfere with the City's right to prosecute City ordinance violations as criminal offenses. The City may use any of the remedies available under the law in both civil and criminal prosecution. If the City chooses to file both civil and criminal charges for the same day of violation, no civil penalties may be assessed but all other remedies are available.

**10-1-106. EFFECT OF HEADING**

Title, Chapter, Part, and Section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any Title, Chapter, Part, or Section hereof.

**10-1-107. VALIDITY OF TITLE - SEVERABILITY**

If any section, subsection, sentence, clause, phrase, portion or provision of this Title is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Title. The Council of this City hereby declares that it would have adopted this Title and each section, subsection, sentence, clause, phrase, portion or provision thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, portions or provisions be declared invalid or unconstitutional. This Section shall apply to all amendments heretofore or hereafter made to this Title.

**10-1-108. NO MANDATORY DUTY - CIVIL LIABILITY**

It is the intent of the City Council of West Valley City that in establishing performance standards or establishing an obligation to act by a City officer or employee, these standards shall not be construed as creating a mandatory duty for purposes of tort liability, if the officers or employees fail to perform their directed duty or duties.

**10-1-109. GENERAL RULES OF INTERPRETATION OF ORDINANCES**

For purposes of this Title:

(a) Any gender includes the other gender.

(b) "Shall" is mandatory; "may" is permissive.

(c) The singular number includes the plural and the plural the singular.

(d) Words used in the present tense include the past and future tense and vice versa.

(e) Words and phrases used in this Title and not specifically defined shall be construed according to the context and approved usage of the language.

**10-1-110. DEFINITIONS APPLICABLE TO TITLE GENERALLY**

The following words and phrases whenever used in this Title shall be constructed as defined in this section unless a different meaning is specifically defined elsewhere in this Title and specifically stated to apply:

(a) "Abatement" means any action the City may take on public or private property and any adjacent property as may be necessary to remove or alleviate a violation, including but not limited to demolition, removal, repair, boarding, and securing or replacement of property.

(b) "Administrative Code Enforcement Order" means an order issued by a Hearing Officer. The Order may include an order to abate the violation, pay civil penalties and administrative costs or take any other action as authorized

or required by this Title and applicable state codes.

(c) "City" means the area within the territorial city limits of West Valley City and such territory outside of this City over which the City has jurisdiction or control by virtue of any Constitutional or Incorporation provisions, or any law.

(d) "Code Enforcement Lien" means a lien recorded to collect outstanding civil penalties, administrative fees, and costs.

(e) "Code Enforcement Performance Bond" means a bond posted by a Responsible Person to ensure compliance with the W.V.C.M.C., applicable state Titles, a judicial action or Administrative Code Enforcement Order.

(f) "Council" means the City Council of West Valley City.

(g) "Code Enforcement Hearing Officer" means any person appointed by the CED Director (or Designee) to preside over Administrative Code Enforcement Hearings.

(h) "Director" means the CED Director (or Designee).

(i) "Enforcement Official" means any person authorized to enforce violations of the W.V.C.M.C. or applicable state codes.

(j) "Financial Institution" means any person that holds a recorded mortgage or deed of trust on a property.

(k) "Good Cause" means incapacitating illness, death, lack of proper notice, unavailability due to unavoidable, unpreventable, or extenuating emergency or circumstance, causes an imminent and irreparable injury, and acts of nature adverse to the requirements.

(l) "Imminent Life Safety Hazard" means any condition which creates a present, extreme and immediate danger to life, property, health or public safety.

(m) "Legal Interest" means any interest that is represented by a document such as a deed of trust, quitclaim deed, mortgage, judgment lien, tax or assessment lien, mechanic's lien or other similar instrument which is recorded with the County Recorder.

(n) "Notice of Compliance" means a document issued by the City representing that a property complies with the requirements outlined in the Notice of Violation.

(o) "Notice of Satisfaction of Judgment" means a document or form, approved by the CED Director (or Designee) which indicates that all outstanding civil penalties and costs have been either paid in full, or that the City has negotiated an agreed amount, or that a subsequent administrative or judicial decision has resolved the outstanding debt. In addition to the satisfaction of the financial debt, the property must also be in compliance with the requirements outlined in the Notice of Violation.

(p) "Notice of Violation" means a written notice prepared by an Enforcement Official which informs a Responsible Person of code violations and orders them to take certain steps to correct the violations.

(q) "Oath" includes affirmations and oaths.

(r) "Person" means any natural person, firm, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, sergeant, officer or employee of any of them or any other entity which is recognized by law as the subject of rights or duties.

(s) "Property Owner" means the record owner of real property based on the County Assessor's records.

(t) "Public Nuisance" means any condition caused, maintained or permitted to exist which constitutes a threat to the public's health, safety and welfare or which significantly obstructs, injures or interferes with the reasonable or free use of property in a neighborhood, community or to any considerable number of persons. A public nuisance also has the same meaning as set forth in Utah Code Annotated.

(u) "Responsible Person" means a person who the City determines is responsible for causing or maintaining a violation of the W.V.C.M.C. or applicable state codes. The term "Responsible Person" includes, but is not limited to, a property owner, tenant, person with a Legal Interest in real property or person in possession of real property.

(v) "Written" includes hand written, typewritten, photocopied, printout by computer, or facsimile.

#### 10-1-111. ACTS INCLUDE CAUSING, AIDING AND ABETTING

Whenever in this Title any act or omission is made unlawful, it shall include causing, permitting, aiding or abetting such act or omission.



## **PART 2 - SERVICE REQUIREMENTS**

### **10-1-201. SERVICE OF NOTICES**

(a) Whenever a notice is required to be given under this Title for enforcement purposes, the notice shall be served by any of the following methods unless different provisions are otherwise specifically stated to apply:

(1) Personal service;  
(2) Regular mail, postage prepaid, to the last known address of the owner(s) or other Responsible Person(s);

(3) Posting the notice conspicuously on or in front of the property. The form of the posted notice shall be approved by the CED Director (or Designee); or

(4) Published in a newspaper of general circulation.

(b) Service by regular mail in the manner described above shall be deemed served on the fourth day after the date of mailing.

(c) The failure of any person with an interest in the property to actually receive any notice served in accordance with this section shall not affect the validity of any proceedings taken under this Title.

### **10-1-202. CONSTRUCTIVE NOTICE OF RECORDED DOCUMENTS**

Whenever a document is recorded with the County Recorder as authorized or required by this Title or applicable state codes, recordation shall provide constructive notice of the information contained in the recorded documents.

## **PART 3 - GENERAL AUTHORITY AND OFFENSES**

### **10-1-301. GENERAL ENFORCEMENT AUTHORITY**

Whenever the Director or an Enforcement Official finds that a violation of the W.V.C.M.C. or applicable state code has occurred or continues to exist, the appropriate administrative enforcement procedure may be used as outlined in this Title. The Director or any designated Enforcement Official has the authority and power necessary to gain compliance with the provisions of the W.V.C.M.C. and applicable state codes. These powers include the power to issue Notices of Violation and administrative citations, inspect public and private property, abate public and private property, and use whatever judicial and administrative remedies are available under the W.V.C.M.C. or applicable state codes.

### **10-1-302. ADOPTION OF POLICY AND PROCEDURES**

The Director is authorized to develop policies and procedures relating to the qualifications, and appointment of hearing officers, hearing officer powers, hearing procedures, scope of the hearing, subpoena powers and other matters relating to Administrative Code Enforcement Hearings.

### **10-1-303. AUTHORITY TO INSPECT**

The Director or any designated Enforcement Official is authorized to enter upon any property or premises to ascertain whether the provisions of the W.V.C.M.C. or applicable state codes are being obeyed, and to make any examinations and surveys as may be necessary in the performance of their enforcement duties. These may include the taking of photographs, samples or other physical evidence. All inspections, entries, examinations and surveys shall be done in a reasonable manner based upon probable cause. If the Responsible Person refuses to allow the Enforcement Official to enter the property, the Enforcement Official shall obtain a Search Warrant.

### **10-1-304. POWER TO ARREST**

The Director or any designated Enforcement Official is authorized to arrest without a warrant any person whenever the Enforcement Official has reasonable cause to believe that the person has committed a violation of the W.V.C.M.C. or applicable state codes in his or her own presence. The Enforcement Official can only arrest a person by issuing a misdemeanor citation or administrative citation. The Enforcement Official may not take any person into physical custody unless the Enforcement Official has reason to believe that he, or others, is in danger.

**10-1-305. FALSE INFORMATION OR REFUSAL PROHIBITED**

It shall be unlawful for any person to willfully make a false statement or refuse to give their name or address with intent to deceive or interfere with a City Employee when in the performance of his or her official duties under the provisions of this Title. A violation of this section is a class B misdemeanor.

**10-1-306. FAILURE TO OBEY A SUBPOENA**

It is unlawful for any person to refuse or fail to obey a subpoena issued for an Administrative Code Enforcement Hearing. Failure to obey a subpoena constitutes contempt and may be prosecuted as a class B misdemeanor.

**CHAPTER 2. ADMINISTRATIVE CODE ENFORCEMENT PROCEDURES**

**PART 1 - ADMINISTRATIVE ABATEMENT**

- 10-2-101. AUTHORITY
- 10-2-102. NOTICE OF VIOLATION
- 10-2-103. REQUESTING HEARING
- 10-2-104. FAILURE TO BRING PROPERTY INTO COMPLIANCE
- 10-2-105. INSPECTIONS

**PART 2 - EMERGENCY ABATEMENT**

- 10-2-201. AUTHORITY
- 10-2-202. PROCEDURES
- 10-2-203. NOTICE OF EMERGENCY ABATEMENT

**PART 3 - DEMOLITIONS**

- 10-2-301. AUTHORITY
- 10-2-302. PROCEDURES

**PART 4 - ADMINISTRATIVE CITATIONS**

- 10-2-401. DECLARATION OF PURPOSE
- 10-2-402. AUTHORITY
- 10-2-403. PROCEDURES
- 10-2-404. CONTENTS OF NOTICE
- 10-2-405. CIVIL PENALTIES ASSESSED

**PART 5 - ADMINISTRATIVE CODE ENFORCEMENT HEARING PROCEDURES**

- 10-2-501. DECLARATION OF PURPOSE
- 10-2-502. AUTHORITY AND SCOPE OF HEARINGS
- 10-2-503. REQUEST FOR ADMINISTRATIVE CODE ENFORCEMENT HEARING
- 10-2-504. NOTIFICATION OF ADMINISTRATIVE CODE ENFORCEMENT HEARING
- 10-2-505. QUALIFICATIONS OF ENFORCEMENT HEARING OFFICER
- 10-2-506. APPOINTMENT OF ENFORCEMENT HEARING OFFICER
- 10-2-507. DISQUALIFICATION OF ENFORCEMENT HEARING OFFICER
- 10-2-508. POWERS OF ENFORCEMENT HEARING OFFICER
- 10-2-509. PROCEDURES AT ADMINISTRATIVE ENFORCEMENT HEARING
- 10-2-510. FAILURE TO ATTEND ADMINISTRATIVE ENFORCEMENT HEARING
- 10-2-511. ADMINISTRATIVE ENFORCEMENT ORDER
- 10-2-512. FAILURE TO COMPLY WITH ORDER

**PART 6 - ADMINISTRATIVE ENFORCEMENT APPEALS**

**10-2-601. APPEAL OF ADMINISTRATIVE CODE ENFORCEMENT HEARING DECISION**

**PART 1 - ADMINISTRATIVE ABATEMENT**

**10-2-101. AUTHORITY**

Any condition caused, maintained or permitted to exist in violation of any provisions of the W.V.C.M.C. or applicable state codes which constitutes a violation may be abated by the City pursuant to the procedures set forth in this Part.

**10-2-102. NOTICE OF VIOLATION**

(a) Whenever the Director determines that a violation of the W.V.C.M.C. or applicable state codes has occurred or continues to exist, the Director or Enforcement Official may choose to proceed under the Administrative Abatement procedures. If this procedure is used, a Notice of Violation shall be issued to a Responsible Person. The Notice of Violation shall include the following information:

1. The name of the property's owner;
2. Street address of violation;
3. Date violation observed;
4. All code sections violated and a description of the property's condition which violates the applicable codes;
5. All remedial action required to permanently correct outstanding violations which may include corrections, repairs, demolition, removal, or other appropriate action;
6. The specific date to correct the violations listed in the Notice of Violation, which date shall be 10 days from the date of service;
7. An explanation of the consequences should the Responsible Person fail to comply with the terms and deadlines as prescribed in the Notice of Violation which may include, but is not limited to: criminal prosecution, civil penalties, revocation of permits, recordation of the Notice of Violation, withholding of future municipal permits, abatement of the violation, costs, administrative fees, and any other legal remedies;
8. Civil penalties will begin to accrue immediately on expiration of the date to correct violations;
9. The amount of the civil penalty on each violation and that the penalty will accrue daily until the property is brought into compliance;
10. If The Director determines that the violations are continuing, the Notice of Violation shall demand that the Responsible Person cease and desist from further action causing the violations and commence and complete all action to correct the outstanding violations under the guidance of the appropriate City Departments.
11. Only one Notice of Violation is required for any 12 month period and civil penalties begin immediately upon any subsequent violations of the notice. The Responsible Person may request a hearing on the renewed violations by following the same procedure as provided for the original notice.
12. Procedures to request a hearing and consequences for failure to request one.

(b) The Notice of Violation shall be served by one of the methods of service listed in Section 10-1-201 of this Title.

(c) More than one Notice of Violation may be issued against the same Responsible Person if it encompasses either different dates, different violations, or different hearings.

**10-2-103 REQUESTING HEARING**

The Responsible Person has the right to request an Administrative Hearing. The request must be in writing and must be filed within 10 days from the date of service of the Notice of Violation. Failure to request a hearing as provided shall constitute a waiver of the right to a hearing.



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**10-2-104 FAILURE TO BRING PROPERTY INTO COMPLIANCE**

(a) If a Responsible Person fails to bring a violation into compliance within 10 days of service of the Notice of Violation, civil penalties shall be owed to the City for each and every subsequent day of violation.

(b) Failure to comply with the Notice of Violation is a class B misdemeanor.

**10-2-105 INSPECTIONS**

It shall be the duty of the Responsible Person to request an inspection when their property has been brought into compliance. It is prima facie evidence that the violation remains on the property if no inspection is requested. Civil penalties accumulate daily until the property has been inspected and a notice of compliance is issued. Reinspection fees shall be assessed pursuant to the costs remedies section of this Title if more than one inspection is necessary.

**PART 2 - EMERGENCY ABATEMENT**

**10-2-201. AUTHORITY**

(1) Whenever the Director determines that an imminent life safety hazard exists that requires immediate correction or elimination, the Director may exercise the following powers without prior notice to the Responsible Person:

(a) Order the immediate vacation of any tenants and prohibit occupancy until all repairs are completed;

(b) Post the premises as unsafe, substandard or dangerous;

(c) Board, fence or secure the building or site;

(d) Raze and grade that portion of the building or site to prevent further collapse and remove any hazard to the general public;

(e) Make any minimal emergency repairs as necessary to eliminate any imminent life safety hazard; or

(f) Take any other action appropriate to eliminate the emergency.

(2) The Director has the authority, based on probable cause, to enter the property without a search warrant or court order, to accomplish the above listed acts to abate the safety hazard.

(3) The Responsible Person shall be liable for all costs associated with the abatement of the life safety hazard. Costs may be recovered pursuant to this Title. The Responsible Person has a right to a Costs Hearing.

**10-2-202. PROCEDURES**

(a) The Director shall pursue only the minimum level of correction or abatement as necessary to eliminate the immediacy of the hazard. Costs incurred by the City during the emergency abatement process shall be assessed and recovered against the Responsible Person through the procedures outlined in the Remedies Section of this Title.

(b) The Director may also pursue any other administrative or judicial remedy to abate any remaining violations.

**10-2-203. NOTICE OF EMERGENCY ABATEMENT**

After an emergency abatement the City shall notify the owner or Responsible Person of the abatement action taken. This notice shall be sent within 10 days of completion of the abatement.

**PART 3 - DEMOLITIONS**

**10-2-301. AUTHORITY**

Whenever the Director determines that a property or building requires demolition, the Director may exercise the following powers once appropriate notice has been given to a Reasonable Person pursuant to the Uniform Abatement of Dangerous Buildings Code or Uniform Fire Codes as required under state law. The Responsible Person shall be liable for all costs associated with the demolition. Costs may be recovered pursuant to this Title. The Responsible Person has a right to a Costs Hearing.

**10-2-302. PROCEDURES**

Once the Director has determined that the Chief Building Inspector or the Fire Marshall has complied with all of the notice requirements of the applicable laws, the property will be abated pursuant to the abatement remedy. Other applicable remedies may also be pursued.

#### **PART 4 - ADMINISTRATIVE CITATIONS**

##### **10-2-401. DECLARATION OF PURPOSE**

The Council finds that there is a need for an alternative method of enforcement for minor violations of the W.V.C.M.C. and applicable state codes. The violations include, but are not limited to, animal control, business licenses, obstruction of sidewalk, snow removal, signs, dumping, and building and fire code violations. The Council further finds that an appropriate method of enforcement for such violations is an administrative citation program.

The procedures established in this Part shall be in addition to criminal, civil or any other legal remedy established by law which may be pursued to address violations of the W.V.C.M.C. or applicable state codes.

##### **10-2-402. AUTHORITY**

(a) Any person violating any minor provisions of the W.V.C.M.C. or applicable state code may be issued an administrative citation by an Enforcement Official as provided in this Part.

(b) A civil penalty shall be assessed by means of an administrative citation issued by the Enforcement Official and shall be payable directly to the City Treasurer's Office.

(c) Penalties assessed by means of an administrative citation shall be collected in accordance with the procedures specified in the remedies section of this Title.

##### **10-2-403. PROCEDURES**

(a) Upon discovering any minor violation of the W.V.C.M.C. or applicable state codes, which does not require a notice of violation, an Enforcement Official may issue an administrative citation to a Responsible Person in the manner prescribed in this Part. The administrative citation shall be issued on a form approved by the Director.

(b) If the Responsible Person is a business, the Enforcement Official shall attempt to locate the business owner and issue the business owner an administrative citation. If the Enforcement Official can only locate the manager of the business, the administrative citation may be given to the manager of the business. A copy of the administrative citation shall also be mailed to the business owner or Responsible Person in the manner prescribed in Section 10-1-201(a)(2) of this Title.

(c) Once the Responsible Person is located, the Enforcement Official shall attempt to obtain the signature of that person on the administrative citation. If the Responsible Person refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the citation and subsequent proceedings.

(d) If the Enforcement Official is unable to locate the Responsible Person for the violation, then the administrative citation shall be mailed to the Responsible Person in the manner prescribed in Section 10-1-201(a)(2) of this Title.

(e) If no one can be located at the property, then the administrative citation may be posted in a conspicuous place on or near the property and a copy subsequently mailed to the Responsible Person in the manner prescribed by Section 10-1-201(a)(2) of this Title.

(f) The administrative citation shall also contain the signature of the Enforcement Official.

(g) The failure of any person with an interest in the property to receive notice shall not affect the validity of any proceedings taken under this Part.

##### **10-2-404. CONTENTS OF NOTICE**

(a) The administrative citation shall refer to the date and location of the violations and the approximate time the violations were observed.

(b) The administrative citation shall refer to the Code sections violated and the title of those sections.

(c) The administrative citation shall state the amount of penalty imposed for the violations.

(d) The administrative citation shall explain how the penalty shall be paid and the time period by which it shall be paid, and the consequences of failure to pay the penalty.

(e) The administrative citation shall identify the right and the procedures to request a hearing.

(f) The citation shall contain the signature of the Enforcement Official and the signature of the Responsible Person if they can be located, as outlined in subsection 10-2-403(c).

#### **10-2-405. CIVIL PENALTIES ASSESSED**

(a) The Director shall establish policies to assist in the assessment of civil penalties for administrative citations.

(b) Civil penalties shall be assessed immediately for each violation listed on the administrative citation.

(c) Subsequent violations may be handled under the Administrative Abatement section.

(d) Payment of the penalty shall not excuse the failure to correct the violations nor shall it bar further enforcement action by the City.

### **PART 5 - ADMINISTRATIVE CODE ENFORCEMENT HEARING PROCEDURES**

#### **10-2-501. DECLARATION OF PURPOSE**

The Council finds that there is a need to establish uniform procedures for Administrative Code Enforcement Hearings conducted pursuant to the W.V.C.M.C.. It is the purpose and intent of the City Council to afford due process of law to any person who is directly affected by an administrative action. Due process of law includes: adequate notice, an opportunity to participate in the administrative hearing and an adequate explanation of the reasons justifying the administrative action. These procedures are also intended to establish a forum to efficiently, expeditiously and fairly resolve issues raised in any administrative code enforcement action.

#### **10-2-502. AUTHORITY AND SCOPE OF HEARINGS**

The City is authorized to establish an administrative hearing program which shall be known as the Administrative Code Enforcement Hearing. The Director shall develop policy and procedures to regulate the hearing process. Any violation of the W.V.C.M.C. and applicable state codes which are handled pursuant to the Administrative Abatement Procedures, the Emergency Abatement Procedures, the Demolition Procedures, or the Administrative Citation Procedures.

#### **10-2-503. REQUEST FOR ADMINISTRATIVE CODE ENFORCEMENT HEARING**

(a) A person served with one of the following documents or notices has the right to request an Administrative Code Enforcement Hearing if the request is filed within ten (10) calendar days from the date of service of one of the following notices:

- (1) Notice of Violation;
- (2) Notice of Itemized Bill for Costs;
- (3) An Administrative Citation;
- (4) Notice of Emergency Abatement;
- (5) Notice Deeming Dog Vicious;
- (6) Notice of Revocation of Dog License;
- (7) Notice Revoking Kennel Permit; or
- (8) Notice of Revocation of Right to Possess Animals

(b) The request for hearing shall be made in writing and filed with the Director.

(c) As soon as practicable after receiving the written notice of the request for hearing, the Director shall appoint an Administrative Code Enforcement Hearing Officer and schedule a date, time and place for the hearing.

#### **10-2-504. NOTIFICATION OF ADMINISTRATIVE CODE ENFORCEMENT HEARING**

(a) Written notice of the day, time and place of the hearing shall be served as soon as practicable prior to the date of the hearing to a Responsible Person.

(b) The format and contents of the hearing notice shall be in accordance with rules and policies promulgated by the Director.

(c) The notice of hearing shall be served by any of the methods of service listed in Section 10-1-201 of this

Title.

**10-2-505. QUALIFICATIONS OF CODE ENFORCEMENT HEARING OFFICER**

The Director shall promulgate rules and procedures as are necessary to establish a pool of qualified persons who are capable of acting on behalf of the City as Code Enforcement Hearing Officers.

**10-2-506. APPOINTMENT OF CODE ENFORCEMENT HEARING OFFICER**

Code Enforcement Hearing Officers presiding at Administrative Code Enforcement Hearings shall be appointed by the Director and compensated by the City. The Hearing Officer may not be an employee of the City and may have no personal or financial interest in any case they hear. The Director shall develop policies and procedures relating to the employment and compensation of Code Enforcement Hearing Officers.

**10-2-507. DISQUALIFICATION OF CODE ENFORCEMENT HEARING OFFICER**

Any person designated to serve as a Code Enforcement Hearing Officer is subject to disqualification for bias, prejudice, interest, or for any other reason for which a judge may be disqualified in a court of law. Rules and procedures for the disqualification of a Code Enforcement Hearing Officer shall be promulgated by the Director.

**10-2-508. POWERS OF CODE ENFORCEMENT HEARING OFFICER**

(a) The Code Enforcement Hearing Officer has the authority to hold hearings on any matter subject to the provisions of the Title.

(b) The Code Enforcement Hearing Officer may continue a hearing based on good cause shown by one of the parties to the hearing or if the Hearing Officer independently determines that due process has not been adequately afforded.

(c) The Director, on behalf of the Hearing Officer, at the request of any party to the hearing, may sign subpoenas for witnesses, documents and other evidence where the attendance of the witness for the admission of evidence is deemed necessary to decide the issues at the hearing. All costs related to the subpoena, including witness and mileage fees shall be borne by the party requesting the subpoena. The Director shall develop policies and procedures relating to the issuance of subpoenas in Administrative Code Enforcement Hearings, including the form of the subpoena and related costs.

(d) The Code Enforcement Hearing Officer has continuing jurisdiction over the subject matter of an Administrative Code Enforcement Hearing for the purposes of granting a continuance, ordering compliance by issuing an Administrative Code Enforcement Order using any remedies available under the law, ensuring compliance of that Order which includes the right to authorize the City to enter and abate a violation, modifying an Administrative Code Enforcement Order, or where extraordinary circumstances exist, granting a new hearing.

(e) The Code Enforcement Hearing Officer has the authority to require a Responsible Person to post a Code Enforcement Performance Bond to ensure compliance with an Administrative Code Enforcement Order.

**10-2-509. PROCEDURES AT ADMINISTRATIVE CODE ENFORCEMENT HEARING**

(a) Administrative Code Enforcement Hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply. However, an informal exchange of discovery may be required. The request must be in writing. Failure to request discovery shall not be a basis for a continuance. Complainant information is protected and shall not be released unless they shall be a witness at the hearing. The procedure and format of the administrative hearing shall follow the procedures promulgated by the Director.

(b) The City bears the burden of proof at an Administrative Code Enforcement Hearing to establish the existence of a violation of the W.V.C.M.C. or applicable state code.

(c) The standard of proof to be used by the Code Enforcement Hearing Officer in deciding the issues at an administrative hearing is by a preponderance of the evidence.

(d) Each party shall have the opportunity to cross-examine witnesses and present evidence in support of his or her case. A written declaration signed under penalty of perjury may be accepted in lieu of a personal appearance. Testimony may be given by telephone or other electronic means.

(e) All hearings are open to the public. They shall be recorded by audio tape. Hearings may be held at the



Location of the violation.

(f) The Responsible Person has a right to be represented by an attorney. If an attorney will be representing the Responsible Person at the hearing, notice of the attorney's name, address and telephone number must be given to the City at least one day prior to the hearing. If notice is not given, the hearing may be continued at the City's request and all costs of the continuance assessed to the Responsible Person.

#### **10-2-510. FAILURE TO ATTEND ADMINISTRATIVE CODE ENFORCEMENT HEARING**

Any party whose property or actions are the subject of any Administrative Code Enforcement Hearing and who fails to appear at the hearing is deemed to waive the right to a hearing, the adjudication of the issues related to the hearing, and the right to appeal, provided that proper notice of the hearing has been provided.

#### **10-2-511. ADMINISTRATIVE CODE ENFORCEMENT ORDER**

(a) The parties may enter into a stipulated agreement which must be signed by both parties. This agreement shall be entered as the Administrative Code Enforcement Order. Entry of this agreement shall constitute a waiver of the right to a hearing and the right to appeal.

(b) Once all evidence and testimony are completed, the Code Enforcement Hearing Officer shall issue an Administrative Code Enforcement Order which affirms or rejects the Notice or Citation. The Code Enforcement Hearing Officer may increase or decrease the total amount of civil penalties and costs that are due pursuant to the City's fee schedule and the procedures in this Title.

(c) The Code Enforcement Hearing Officer may issue an Administrative Code Enforcement Order that requires the Responsible Person to cease from violating the W.V.C.M.C. or applicable state Codes and to make necessary corrections.

(d) The Code Enforcement Hearing Officer may order the City to enter the property and abate all violations which may include removing animals in violation.

(e) The Code Enforcement Hearing Officer may revoke a kennel permit, an animal license, or the right to possess animals as provide in the W.V.C.M.C.

(f) As part of the Administrative Code Enforcement Order, the Code Enforcement Hearing Officer may establish specific deadlines for the payment of penalties and costs and condition the total or partial assessment of civil penalties on the Responsible Person's ability to complete compliance by specified deadlines.

(g) The Code Enforcement Hearing Officer may issue an Administrative Code Enforcement Order which imposes additional penalties that will continue to be assessed until the Responsible Person complies with the Hearing Officer's decision and corrects the violation.

(h) The Code Enforcement Hearing Officer may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the Administrative Code Enforcement Order.

(i) The Code Enforcement Hearing Officer may order the Responsible Person to post a performance bond to ensure compliance with the Order.

(j) The Administrative Code Enforcement Order shall become final on the date of the signing of the order.

(k) The Administrative Code Enforcement Order shall be served on all parties by any one of the methods listed in Section 10-1-201 of this Title.

#### **10-2-512. FAILURE TO COMPLY WITH ORDER**

(a) Upon the failure of the Responsible Person to comply with the terms and deadlines set forth in the Administrative Code Enforcement Order, the Director may use all appropriate legal means to recover the civil penalties and administrative costs to obtain compliance.

(b) After the Code Enforcement Hearing Officer issues an Administrative Code Enforcement Order, the Director shall monitor the violations and determine compliance.

### **PART 6- ADMINISTRATIVE ENFORCEMENT APPEALS**

#### **10-2-601. APPEAL OF ADMINISTRATIVE CODE ENFORCEMENT HEARING DECISION**

(a) Any person adversely affected by any decision made in the exercise of the provision of this chapter may

file a petition for review of the decision or order with the district court within 30 days after the decision is rendered.

(b) No person may challenge in district court an Administrative Code Enforcement Hearing Officer's decision until that person has exhausted his administrative remedies.

(c) The courts shall:

(1) presume that the Administrative Code Enforcement Hearing Officer's decision and orders are valid;

(2) review the record to determine whether or not the decision was arbitrary, capricious, or illegal.

### **CHAPTER 3. ADMINISTRATIVE AND JUDICIAL REMEDIES**

#### **PART 1 - RECORDATION OF NOTICES OF VIOLATION**

- 10-3-101. DECLARATION OF PURPOSE
- 10-3-102. AUTHORITY
- 10-3-103. PROCEDURES FOR RECORDATION
- 10-3-104. SERVICE OF NOTICE OF RECORDATION
- 10-3-105. FAILURE TO REQUEST
- 10-3-106. NOTICE OF COMPLIANCE - PROCEDURES
- 10-3-107. PROHIBITION AGAINST ISSUANCE OF MUNICIPAL PERMITS
- 10-3-108. CANCELLATION OF RECORDED NOTICE OF VIOLATION

#### **PART 2 - ADMINISTRATIVE CIVIL PENALTIES**

- 10-3-201. DECLARATION OF PURPOSE
- 10-3-202. AUTHORITY
- 10-3-203. PROCEDURES FOR ASSESSING CIVIL PENALTIES
- 10-3-204. DETERMINATION OF CIVIL PENALTIES
- 10-3-205. MODIFICATION OF CIVIL PENALTIES
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#### **PART 3 - ABATEMENT OF VIOLATION**

- 10-3-301. AUTHORITY TO ABATE
- 10-3-302. PROCEDURES FOR ABATEMENT

#### **PART 4 - ADMINISTRATIVE COSTS**

- 10-3-401. DECLARATION OF PURPOSE
- 10-3-402. AUTHORITY
- 10-3-403. NOTIFICATION OF ASSESSMENT OF REINSPECTION FEES
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#### **PART 5 - ADMINISTRATIVE FEES**

- 10-3-501. ADMINISTRATIVE FEES

#### **PART 6 - INJUNCTIONS**

- 10-3-601. CIVIL VIOLATIONS - INJUNCTIONS

#### **PART 7 - PERFORMANCE BONDS**

- 10-3-701. PERFORMANCE BOND

**PART 1 - RECORDATION OF NOTICES OF VIOLATION**

**10-3-101. DECLARATION OF PURPOSE**

The Council finds that there is a need for alternative methods of enforcement for violations of the W.V.C.M.C. and applicable state codes which are found to exist on real property. The Council further finds that an appropriate method of enforcement for these types of violations is the issuance and recordation of Notices of Violation.

The procedures established in this Part shall be in addition to criminal, civil, or any other remedy established by law which may be pursued to address the violation of the W.V.C.M.C. or applicable state codes.

**10-3-102. AUTHORITY**

Whenever the Director determines that a property or violation has not been brought into compliance as required in this Title, the Director has the authority to record the Notice of Violation or Administrative Code Enforcement Order with the Recorder's Office of Salt Lake County.

**10-3-103. PROCEDURES FOR RECORDATION**

(a) Once the Director has issued a Notice of Violation to a Responsible Person and the property remains in violation after the deadline established in the Notice of Violation, and no request for an Administrative Hearing has been filed, the Director shall record a Notice of Violation with the Recorder's Office of Salt Lake County.

(b) If an Administrative Hearing is held and an order is issued in the City's favor, the Director shall record the Administrative Code Enforcement Order with the Recorder's Office of Salt Lake County.

(c) The recordation shall include the name of the property owner, the parcel number, the parcel's legal description, and a copy of the Notice of Violation or Order.

(d) The recordation does not encumber the property, but merely places future interested parties on notice of any continuing violation found upon the property.

**10-3-104. SERVICE OF NOTICE OF RECORDATION**

A notice of the recordation shall be served on the Responsible Person and property owner pursuant to any of the methods of service set forth in Section 10-1-201 of this Title.

**10-3-105. FAILURE TO REQUEST**

The failure of any person to file a request for an Administrative Code Enforcement hearing when served with a Notice of Violation shall constitute a waiver of the right to an administrative hearing and shall not affect the validity of the recorded Notice of Violation.

**10-3-106. NOTICE OF COMPLIANCE - PROCEDURES**

(a) When violations have been corrected, the Responsible Person or property owner may request an inspection of the property from the Director.

(b) Once the Director receives this request, the Director shall reinspect the property as soon as practicable to determine whether the violations listed in the Notice of Violation or the Order have been corrected and whether all necessary permits have been issued and final inspections have been performed.

(c) The Director shall serve a Notice of Compliance to the Responsible Person or property owner in the manner provided in Section 10-1-201 of this Title if the Director determines that:

(1) all violations listed in the recorded Notice of Violation or Order have been corrected;

(2) all necessary permits have been issued and finalized;

(3) all civil penalties assessed against the property have been paid; and

(4) the party requesting the Notice of Compliance has paid all administrative fees and costs.

(d) If the Director denies a request to issue a Notice of Compliance, the Director shall serve the Responsible Person with a written explanation setting forth the reasons for the denial. The written explanation shall be served by any of the methods of service listed in Section 10-1-201 of this Title.

**10-3-107. PROHIBITION AGAINST ISSUANCE OF MUNICIPAL PERMITS**

West Valley City may withhold business licenses, permits for kennels, or permits for any alteration, repair, or construction pertaining to any existing or new structures or signs on the property, or any permits pertaining to the use and development of the real property or the structure. The City may withhold permits until a Notice of Compliance has been issued by the Director. The City may not withhold permits which are necessary to obtain a Notice of Compliance or which are necessary to correct serious health and safety violations.

**10-3-108. CANCELLATION OF RECORDED NOTICE OF VIOLATION**

The Director or Responsible Person shall record the Notice of Compliance with the County Recorder's Office. Recordation of the Notice of Compliance shall have the affect of canceling the recorded Notice of Violation.

**PART 2- ADMINISTRATIVE CIVIL PENALTIES**

**10-3-201. AUTHORITY**

(a) Any person violating any provision of the W.V.C.M.C. or applicable state code may be subject to the assessment of civil penalties for each violation.

(b) Each and every day a violation of any provision of the W.V.C.M.C. or applicable state code exists is subject to the assessment of civil penalties.

(c) Civil penalties can not be assessed when a criminal case has been filed as fines will be assessed with the criminal case.

(d) Interest shall be assessed per City policy on all outstanding civil penalties balances until the case has been paid in full.

(e) Civil penalties for violations of any provision of the W.V.C.M.C. or applicable state codes shall be assessed pursuant to the City fee schedule or as ordered by the Administrative Code Enforcement Hearing Officer. The maximum rate shall be \$1000 per violation per day.

**10-3-202. PROCEDURES FOR ASSESSING CIVIL PENALTIES**

(a) If a Responsible Person fails to bring a violation into compliance within 10 days of service of the Notice of Violation, civil penalties shall be owed to the City for each and every subsequent day of violation.

(b) Civil penalties are assessed and owing immediately for any violation of the W.V.C.M.C. or applicable state codes which does not require a prior notice.

**10-3-203. DETERMINATION OF CIVIL PENALTIES**

(a) Civil penalties shall be assessed per violation per day pursuant to the City fee schedule.

(b) Civil penalties shall continue to accrue until the violation(s) has been brought into compliance with W.V.C.M.C. or applicable state code.

**10-3-204. MODIFICATION OF CIVIL PENALTIES**

(a) Upon completion of the Notice of Violation or Administrative Enforcement Order, the Administrative Code Enforcement Hearing Officer may modify the civil penalties on a finding of good cause.

(b) Civil penalties may be waived or modified by the Hearing Officer if there is a finding of good cause based on the Responsible Person's claim of non-conforming use or conditional use and:

1. the City's need to verify the claim; or
2. the Responsible Person's filing of an application for either use before expiration of the date to correct

**10-3-206. FAILURE TO PAY PENALTIES**

The failure of any person to pay civil penalties assessed within the specified time may result in the Director pursuing any legal remedy to collect the civil penalties as provided in the law.



### **PART 3 - ABATEMENT OF VIOLATION**

#### **10-3-301. AUTHORITY TO ABATE**

The Director is authorized to enter upon any property or premises to abate the violation of W.V.C.M.C. and applicable state code. The Director is authorized to assess all costs for the abatement to the Responsible Person and use any remedy available under the law to collect the costs. If additional abatements are necessary within two years, treble costs may be assessed against the Responsible Person(s) for the actual abatement.

#### **10-3-302. PROCEDURES FOR ABATEMENT**

(a) Once the procedures set forth in this Title have been completed, the violation may be abated by City personnel or by a private contractor acting under the direction of the City.

(b) City personnel or a private contractor may enter upon private property in a reasonable manner to abate the ordinance violation as specified in the Notice of Violation or Administrative Code Enforcement Order.

(c) If the Responsible Person abates the violation before the City performs the actual abatement pursuant to a Notice of Violation or Administrative Code Enforcement Order, the Director may still assess all costs incurred by the City against the Responsible Person.

(d) When the abatement is completed, a report describing the work performed and an itemized account of the total abatement costs shall be prepared by the Director. The report shall contain the names and addresses of the Responsible Persons of each parcel, the tax parcel number and a legal description of the property.

(e) The Director shall serve the Notice of Costs and the Itemized Bill of Costs by registered mail to the last known address to the Responsible Person(s). The Notice shall demand full payment within twenty (20) days to the City Treasurer.

(f) The Director shall schedule an Itemized Bill for Costs hearing if requested in writing by any or all Responsible Persons.

### **PART 4- COSTS**

#### **10-3-401. DECLARATION OF PURPOSE**

(a) The Council finds there is a need to recover costs incurred by Enforcement Officials and other City personnel who spend considerable time inspecting and reinspect properties throughout West Valley in an effort to ensure compliance with the W.V.C.M.C. or applicable state Codes.

(b) The Council further finds the assessment of costs is an appropriate method to recover expenses incurred for actual costs of abating violations, reinspection fees, filing fees, attorney fees, hearing officer fees, title search, and any additional actual costs incurred by the City for each individual case. The assessment and collection of costs shall not preclude the imposition of any administrative or judicial civil penalties or fines for violations of the W.V.C.M.C. or applicable state Codes.

#### **10-3-402. AUTHORITY**

(a) Whenever actual costs are incurred by the City on a property to obtain compliance with provisions of the W.V.C.M.C. and applicable state Codes, the Director may assess costs against the Responsible Person.

(b) Once a Notice of Violation has been issued, the property will be inspected one time. Any additional inspections shall be subject to reinspection fees pursuant to the City fee schedule.

#### **10-3-403. NOTIFICATION OF ASSESSMENT OF REINSPECTION FEES**

(a) Notification of reinspection fees shall be provided on the Notice of Violation served to the Responsible Person(s).

(b) Reinspection fees assessed or collected pursuant to this Part shall not be included in any other costs assessed.

(c) The failure of any Responsible Person to receive notice of the reinspection fees shall not affect the validity of any other fees imposed under this Part.

**10-3-404. FAILURE TO TIMELY PAY COSTS**

The failure of any person to pay assessed costs by the deadline specified in the invoice shall result in a late fee pursuant to City policy.

**PART 5- ADMINISTRATIVE FEES**

**10-3-501. ADMINISTRATIVE FEES**

The Director or Code Enforcement Hearing Officer is authorized to assess administrative fees for costs incurred in the administration of this program such as, investigation of violations, preparation for hearings, hearings, and the collection process.

**PART 6- INJUNCTIONS**

**10-3-601. CIVIL VIOLATIONS - INJUNCTIONS**

In addition to any other remedy provided under the W.V.C.M.C. or state code, including criminal prosecution or administrative remedies, any provision of the W.V.C.M.C. may be enforced by injunction issued in the Third District Court upon a suit brought by West Valley City.

**PART 7- PERFORMANCE BONDS**

**10-3-701. PERFORMANCE BOND**

(a) As part of any notice, order, or action, the Administrative Code Enforcement Hearing Officer has the authority to require Responsible Persons to post a performance bond to ensure compliance with the W.V.C.M.C., applicable state Codes or any judicial action.

(b) If the Responsible Person fails to comply with the notice, order, or action, the bond will be forfeited to the City. The bond will not be used to offset the other outstanding costs and fees associated to the case.

**CHAPTER 4- RECOVERY OF CODE ENFORCEMENT PENALTIES AND COSTS**

**PART 1- CODE ENFORCEMENT TAX LIENS**

- 10-4-101. DECLARATION OF PURPOSE**
- 10-4-102. PROCEDURES FOR TAX LIENS WITHOUT A JUDGMENT**
- 10-4-103. PROCEDURES FOR TAX LIENS WITH A JUDGMENT**
- 10-4-104. CANCELLATION OF CODE ENFORCEMENT TAX LIEN**

**PART 2- WRIT OF EXECUTION**

- 10-4-201. RECOVERY OF COSTS BY WRIT OF EXECUTION**

**PART 3- WRIT OF GARNISHMENT**

- 10-4-301. RECOVERY OF COSTS BY WRIT OF GARNISHMENT**

**PART 4- ALLOCATION OF FUNDS COLLECTED UNDER THE ADMINISTRATIVE CODE ENFORCEMENT HEARING PROGRAM**

- 10-4-401. ABATEMENT SUPERFUND**
- 10-4-402. REPAYMENT TO ABATEMENT SUPERFUND**
- 10-4-403. CODE ENFORCEMENT ADMINISTRATIVE FEES AND COSTS FUND**
- 10-4-404. ALLOCATION OF CIVIL PENALTIES**

## **PART 1 - CODE ENFORCEMENT TAX LIENS**

### **10-4-101. DECLARATION OF PURPOSE**

The Council finds that recordation of Code Enforcement Tax Liens will assist in the collection of civil penalties, administrative costs, and administrative fees assessed by the Administrative Code Enforcement Hearing Program or judicial orders. The Council further finds that collection of civil penalties, costs and fees assessed for Code enforcement violations is important in deterring future violations and maintaining the integrity of the City's Code enforcement system. The procedures established in this Part shall be used to complement existing administrative or judicial remedies which may be pursued to address violations of the W.V.C.M.C. or applicable state Codes.

### **10-4-102. PROCEDURES FOR TAX LIENS WITHOUT A JUDGMENT**

(a) Once the City has abated a property for weeds, garbage, refuse, or unsightly or deleterious objects or structures, the Director shall record a Code Enforcement Tax Lien against any real property owned by the Responsible Person(s).

(b) The Director shall provide to the Responsible Person a written notice informing him or her that a Code Enforcement Tax Lien is being recorded for the amount of actual costs of abatement. Payment shall be due within twenty (20) calendar days from the date of mailing.

(c) The Director shall serve the Notice of Code Enforcement Tax Lien by any one of the methods of service set forth in Section 10-1-201 of this Title.

(d) Three copies of the Itemized Statement of Expenses incurred in the removal and destruction of the violations shall be filed with the County Treasurer within 10 days after completion of the work of removing the violations.

(e) The failure of any person with a financial interest in the property to actually receive the notice of the lien shall not affect the validity of the lien or any proceedings taken to collect the outstanding costs of abatement.

### **10-4-103. PROCEDURES FOR TAX LIENS WITH A JUDGMENT**

Once a judgment has been obtained from the appropriate court assessing costs against the Responsible Person(s), the Director may record a Code Enforcement Tax Lien against any real property owned by the Responsible Person(s).

### **10-4-104. CANCELLATION OF CODE ENFORCEMENT TAX LIEN**

Once payment in full is received for the outstanding civil penalties and costs or the amount is deemed satisfied pursuant to a subsequent administrative or judicial order, the Director shall either record a Notice of Satisfaction of Judgment or provide the property owner or financial institution with the Notice of Satisfaction of Judgment so they can record this notice with the County Recorder's office. The Notice of Satisfaction of Judgment shall include the same information as provided for in the original Code Enforcement Tax Lien. Such Notice of Satisfaction of Judgment shall cancel the Code Enforcement Tax Lien.

## **PART 2 - WRIT OF EXECUTION**

### **10-4-201. RECOVERY OF COSTS BY WRIT OF EXECUTION**

After obtaining a judgment, the Director may collect the obligation by use of all appropriate legal means. This may include the execution on personal property owned by the Responsible Person by filing a writ with the applicable court.

## **PART 3 - WRIT OF GARNISHMENT**

### **10-4-301. RECOVERY OF COSTS BY WRIT OF GARNISHMENT**

After obtaining a judgment, the Director may collect the obligation by use of all appropriate legal means. This

may include the garnishment of paychecks, financial accounts, and other income or financial assets by filing a writ with the applicable court.

**PART 4 - ALLOCATION OF FUNDS COLLECTED UNDER ADMINISTRATIVE CODE ENFORCEMENT HEARING PROGRAM**

**10-4-401. ABATEMENT SUPERFUND**

There is hereby established a revolving fund to be known as the Abatement Superfund to defray costs of administrative and judicial abatements. The fund shall be reimbursed by collection from the property or property owner as specified in this Title and by the courts. The Director shall establish accounting procedures to ensure proper account identification, credit and collection. This fund may be operated and used in conjunction with procedures ordered or authorized under the abatement provision of this Title.

**10-4-402. REPAYMENT TO ABATEMENT SUPERFUND**

All monies recovered from the sale or transfer of property or by payment for the actual abatement costs shall be paid to the City Treasurer who shall credit the appropriate amount to the Abatement Superfund.

**10-4-403. CODE ENFORCEMENT ADMINISTRATIVE FEES AND COST FUND**

Administrative Fees and Administrative Costs, except for actual abatement costs, collected pursuant to this Part shall be deposited in the Code Enforcement Administrative Fees and Costs Fund as established by the Director for the enhancement of the City's code enforcement efforts and to reimburse City Departments for investigative costs and costs associated with the hearing process. Fees and Costs deposited in this fund shall be appropriated and allocated in a manner determined by the Director. The City Auditor shall establish accounting procedures to ensure proper account identification, credit and collection.

**10-4-404. ALLOCATION OF CIVIL PENALTIES**

Civil penalties collected pursuant to this Part shall be deposited in the General Fund of the City. Civil penalties deposited in this fund shall be appropriated and allocated in a manner determined by the City Manager and the City Council. The City Auditor shall establish accounting procedures to ensure proper account identification, credit and collection.

**Section 3. Severability.** If any provision of this ordinance is declared to be invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

**Section 4. Effective Date.** This ordinance shall take effect immediately upon posting as required by law.

PASSED and APPROVED this 4<sup>th</sup> day of September, 1997.

WEST VALLEY CITY

Gerald S. Wright  
MAYOR

ATTEST:

Sherryl M. Kendrick  
CITY RECORDER

